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## COMMENT.

### THE REQUIREMENT OF A LICENSE TO PRACTICE OSTEOPATHY.

The law imposing qualifications upon those practicing the science of medicine has gone through a gradual evolution from the time when no qualification at all was necessary, when the charlatan and quack were free to practice on the same footing as the skilled physician, to the present when the statutes require long courses of study and difficult examinations. The courts, however, are not yet agreed as to whether these qualifications apply to the osteopath. On this point we find a very marked conflict, a division which is largely due,

of course, to the difference in the statutes of the respective States, but noteworthy also for the difference of opinion as to whether osteopathy is or is not a branch of medicine. That it is the practice of medicine, and, therefore, subject to license requirements is held in Illinois, Nebraska, Alabama and Ohio; that it is not is the opinion of the courts of Mississippi, New York, Kentucky, Pennsylvania and North Carolina.

In *Eastman v. People,* 71 Ill. App. 236, under the broad definition that "Medicine is the art of understanding diseases and curing or relieving them when possible," it was held that the osteopath is liable to the penalty imposed by the State for practicing medicine without a license. This decision was followed in *Little v. State,* 60 Neb. 749. In *Bragg v. State,* 134 Ala. 165, after reviewing the authorities exhaustively, the court holds that a statute which makes it unlawful for any person to practice "medicine or surgery without having first obtained a certificate of qualification from one of the authorized boards of medical examiners of this State," embraces those who practice osteopathy, which as a science or art includes the diagnosis of disease and the treatment thereof by a system of manipulation of the limbs and body of the patient with the hands by kneading, rubbing or pressing upon the different parts of the body. "The practitioners (of medicine) are not simply those who prescribe drugs or other medicinal substances as remedial agents, but are those who diagnose disease and prescribe or apply any therapeutic agent for its cure." In *State v. Liffring,* 61 Ohio St. 39, it was held that osteopathy was not within the meaning of the act of Feb. 27, 1896, but in *State v. Gravett,* 65 Ohio St. 289, this finding was reversed under a more recent statute.

In the recent case of *Hayden v. State,* 33 South. 653, the Supreme Court of Mississippi holds that a statute which provides that the practice of medicine shall mean to "prescribe or direct for the use of any person any drug, medicine, appliance or agency . . . for the cure" of any disease, fracture, etc., does not apply to osteopathy. The court construes the statute literally and says: "A wise legislature some time in the future will doubtless make suitable regulations for the practice of osteopathy so as to exclude the ignorant and unskillful practitioners of the art among them." This decision follows *Smith v. Lane,* 24 Hun 632, and *Nelson v. State Board,* 57 S. W. 501 (Ken.), where it was held that the board of health would be enjoined from interfering with or molesting one in the practice of his profession as an osteopath. In *Com. v. Pierce,* 10 Penn. Dist. 335, it was held that osteopathy was not within the statute, but where a practitioner of osteopathy furnishes medicines to patients or uses a sound, he is practicing medicine within its meaning. The recent case of *State v. MacKnight,* 131 N. Car. 717, decides the same way. The court says: "If it is a fraud and imposition, and injury results, the osteopath is liable both civilly and criminally. Certainly baths and diet could be advantageously prescribed to many people. Rubbing is well enough if the patient is

not rubbed the wrong way. The real complaint is that osteopaths restrict themselves to these remedies and do not resort to drugs and surgery; but that very fact establishes that they do not violate the law requiring a license to practice medicine and surgery. Doubtless there is an appeal to the imagination, but who does not know that a prescription by a physician in whom the patient has implicit confidence is oftentimes more effective than the same treatment by one in whom he has none, and that at times bread pills and other harmless prescriptions are administered with good results."

That such statutes do not prohibit the assumption of the title "doctor" by any person; that praying for those suffering from disease, or teaching that disease will disappear and physical perfection be attained as a result of prayer; and that the system known as "Christian Science" do not come within their provisions has been held in *State of Rhode Island v. Mylod,* 40 Atl. 753, 41 L. R. A. 428, and *Evans v. State,* 9 Ohio S. & C. Dec. 222.

The Legislature of Pennsylvania now has a bill under consideration which provides that all persons who shall profess to diagnose or treat disease or injury "by any method whatsoever" shall be licensed, and that the condition of such license shall be the passing before a Board of Medical Examiners of a satisfactory examination in anatomy, physiology, pathology, and diagnosis, or present satisfactory evidence of having passed such examination before a similar body in another State having equally stringent requirements. The object of this bill, at least, would seem to offer a just solution of the difficulty with which the legislatures and courts are now confronted. On the one hand it would exclude from medical practice by any system or method those not qualified by education to practice intelligently. On the other hand by merely requiring a knowledge of the elements of modern medical education it would not place too great a check upon the liberty to choose one's own method of treatment. The practitioner could practice any system subject only to liability for malpractice.

## RIGHT TO ENJOIN STRIKES ON THE GROUND OF INTERFERENCE WITH INTERSTATE COMMERCE.

The recent opinion of Judge Adams of the United States Circuit Court for the Eastern District of Missouri in the case of the *Wabash R. R. Co. v. Hannahan* (Mar. 31, 1903), denying the right of the plaintiff to enjoin the officers of the Brotherhoods of Railway Engineers and Firemen from ordering a strike or otherwise interfering with the fulfillment of their obligations to interstate commerce, has awakened much comment. The Central Law Journal (Apr. 17, 1903) commenting on the decision reaches the conclusion that the case of *Re Debs,* 158 U. S. 725 (1895), holds squarely against the position taken by the court in the principal case. But